plaintiff as both its two vital organs, viz board of directors and general meeting, would not authorize such court action. As a defendant, any judgment may be given in its favour when the defendant company is in a position to counterclaim from the real defendants, if not, it will be at least res judicata for the company and this will prevent subsequent emerging majority shareholders, if any, from starting another action again against the 'real' defendants.

Application dismissed.

Solicitors: *Loh Yew Dong & Co; Albar, Zulkifly & Yap.*

Reported by *Ng Sheau Jiuan*

Malaysian Resources Credit & Leasing Sdn Bhd v AK Construction Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) – SUIT NO C1-23-3643-86
GUNN CHIT TUAN J
24 JANUARY 1989

Contract – Termination of lease agreement by plaintiff – Whether termination was in accordance with terms of agreement – Whether plaintiff's letter of demand constituted notice in writing – No provision in agreement for notice in writing to be in any specific form

By a lease agreement made between the plaintiff and the first defendant, the plaintiff agreed to lease to the first defendant certain goods upon the terms and conditions of the lease agreement. By a guarantee agreement, the second and third defendants guaranteed the plaintiff for the due performance by the first defendant of all obligations due under the lease agreement. The first defendant defaulted in payment of the lease rentals and the plaintiff obtained summary judgment against the defendants for the lease rentals payable under the lease agreement. The defendants appealed to the High Court, contending that the plaintiff had not duly determined the lease agreement in accordance with cl 9 of the agreement, there being no notice in writing to the lessee of the determination.

Held, dismissing the defendants' appeal:

(1) The lease agreement merely provides that it shall be lawful for the lessor, by notice in writing to the lessee, to determine the lease in certain circumstances including default in payment of the rent instalments on their due dates, but does not provide that the notice in writing should be in any specific form.

(2) The plaintiff's letter of demand to the defendants dated 22 August 1986 was a sufficient notice in writing to the defendants and stated that if they failed to pay the outstanding instalments of rent together with interest on the overdue sum at the rate of 27% pa within the stipulated period, then the lease agreement would be deemed to be terminated.

(3) As the lease agreement had been duly determined by a notice in writing in accordance with cl 9 of the agreement, there was no triable issue.

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 03-16 of 1989.]

Chia Loong Thye for the defendants.
Kamilah Kassim (Miss) for the plaintiff.

Cur Adv Vult

Gunn Chit Tuan J: The plaintiff abovenamed had applied for an order by way of summons-in-chambers dated 3 August 1987 that it may be at liberty to enter final judgment against the defendants for a sum of $255,030.30 together with interest thereon at the rate of 27% pa from 11 September 1986 to the date of realization and costs.

By a lease agreement in writing dated 1 June 1984 made between the plaintiff and AK Construction Sdn Bhd (the first defendant), the former agreed to lease to the latter certain goods upon the terms and conditions of the said lease agreement.

By a guarantee agreement, one Adnan bin Haji Manidin and Khoo Tian *alias* Chiu Er Yeh (the second and third defendants respectively) jointly and severally guaranteed the plaintiff for the due observance and performance by the first defendant of all sums due and all obligations under the said lease agreement.

The first defendant defaulted in payment of the lease rentals from April 1986 to September 1986 which amounted to $105,840. By reason of the default of the lease rental payment it was averred that the plaintiff had unilaterally duly determined the lease agreement and claimed against the first defendant for the sum of $255,030.30, being total lease rentals payable under the aforesaid lease agreement, particulars of which are as follows:

Particulars

Rentals outstanding (April 1986 to September 1986)	$ 105,840.00
Rentals receivable (October 1986 to May 1987)	$ 141,120.00
Interest on outstanding sum as at 10 September 1986 and still continuing	$ 8,070.30
	$ 255,030.30

Mr Chia, counsel for the defendants, stated that the only issue in this appeal from the decision of the learned senior assistant registrar who on 10 May 1988 had granted summary judgment against the defendants for the said sum of $255,030.30 together with interest thereon at the rate of 27% pa from 11 September 1986 to the date of realization and costs, was the defendants' contention that the plaintiff had not duly determined the said agreement in accordance with its terms. Counsel then

referred to cl 9 of the said lease agreement which reads as follows:

> If ...
> (a) the lessee makes default in payment of the instalments of rent on their due dates as provided in the schedule hereto and such default continues for five days or more;
>
> then it shall be lawful for the lessor (without prejudice to any other of the lessor's rights and notwithstanding that it may have waived a previous default or matter of the same or another nature) by notice in writing to the lessee to determine this lease together with all rights of the lessee hereunder ...

and stated that there was no notice in writing to the lessee to determine the said lease agreement. Counsel then referred to para 532 of 9 *Halsbury's Laws of England*, 4th Ed, wherein it is stated that 'if a contract contains a provision that one of the parties thereto may determine the contract by notice, notice must be given in accordance with the terms of the contract, but the right to notice may be waived'. Counsel therefore submitted that there was a triable issue.

Miss Kamilah, counsel for the plaintiff, pointed out that a letter of demand was sent to the defendants on 22 August 1986 to recover an outstanding sum of $99,200 when the first defendant defaulted in payment of the monthly rentals from April 1986 to August 1986 under the lease agreement. The said letter (exh EWK-1 to encl 7) was as follows:

> BC/MRC/3170/86 22 August 1986
>
> 1 AK Construction Sdn Bhd,
> Bangunan AK,
> 43, 3rd Floor, Jalan Barat,
> Off Jalan Imbi,
> Kuala Lumpur.
>
> 2 Encik Adnan bin Haji Manidin,
> Lot 279, 7 1/2 Miles,
> Ulu Klang,
> Setapak,
> Kuala Lumpur.
>
> 3 Mr Khoo Tian *alias* Chiu Er Yeh,
> No 33, Setia Kasih 9,
> Bukit Damansara,
> Kuala Lumpur.
>
> Dear Sir/s,
>
> Re: Outstanding sum of $88,200 due to Malaysian Credit & Leasing Resources Sdn Bhd.
>
> We act for Malaysian Resources Credit & Leasing Sdn Bhd of 19th Floor, Resource House, No 10, Jalan Raja Laut, 50350 Kuala Lumpur.
>
> We have been informed by our clients that you have defaulted in payment of the monthly rentals from April 1986 to August 1986 under lease agreement no MRCL/L 0117/84 dated 1 June 1984 amounting to $88,200.
>
> By a guarantee agreement you, Adnan bin Haji Manidin and Khoo Tian *alias* Chiu Er Yeh jointly and severally guarantee on demand by our clients the due rental, interest and all other sum whatsoever due from AK Construction Sdn Bhd.
>
> Without prejudice to any of our clients' rights and in particular their right to commence legal proceedings for specific performance and/or damages for breach of contract, our clients have instructed us, which we hereby do, to demand from you the sum of $88,200 together with interest on the said overdue sum at the rate of 27% pa calculated on a daily basis to the date of realization and a further sum of $50 being our letter fee within seven (7) days from the date hereof.
>
> Take notice that unless the aforesaid sum of $88,200 together with interest on the said overdue sum at the rate of 27% pa calculated on a daily basis to the date of realization and a further sum of $50 being our letter fee is received by us or our clients *within the stipulated period*, failing which the *said lease agreement is deemed to be terminated* and we have our clients' instructions to commence legal proceedings against you for the full recovery of all outstanding sums due to our clients together with interest and costs without any further reference.
>
> Yours faithfully,
> (Sgd)
>
> cc clients
>
> Your lease agreement no MRCL/L/0117/84.

Counsel submitted that that was the notice of termination.

The said lease agreement merely provides that it shall be lawful for the lessor by notice in writing to the lessee to determine the lease in certain circumstances including default in payment of the instalments of rents on their due dates, but does not provide that the notice in writing should be in any specific form. I agreed with counsel for the plaintiff and found that the above quoted letter of 22 August 1986 was a sufficient notice in writing to the defendants and that if they failed to pay the outstanding instalments of rent together with interest on the overdue sum at the rate of 27% pa within the stipulated period, that is, within seven days in this case from the date of the said letter, then the lease agreement would be deemed to be terminated. As it was my judgment that the said lease agreement had been duly determined by a notice in writing in accordance with cl 9 of the said lease agreement, it follows that there was no triable issue, and I dismissed with costs the defendants' appeal from the decision of the learned senior assistant registrar.

Appeal dismissed.

Solicitors: *Skrine & Co*; *Eddy Chung & Co.*

Reported by *Ng Sheau Jiuan*